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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Kansas state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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Antidote: Civic Responsibility

Kansas Law

Phi Alpha Delta Public Service Center
• 1511 K Street, NW • Suite 611 • Washington, DC 20005•
• 202-638-2898 • fax 202-638-2919 •

SO 025 034

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Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no Kansas law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

Aimee and Carrie's parents, however, may be in violation of Kansas law. One is endangering the welfare of a child if one willfully causes or permits a child under 18 to suffer unjustifiable physical pain or mental distress or if one unreasonably causes or permits a child under 18 to be placed in a situatin in which the child's life, body or health may be injured or endangered. Kan. Stat. Ann. §21-3608 (1988). Depending on how often the parents left the girls without adult supervision and for how long, they may be in violation of this law.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

In Kansas no person under 21 is permitted to possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt. Kan. Stat. Ann. §41-727 (1991). Since Tyrell is under 21 his drinking wine is unlawful.

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

Yes. It is unlawful to possess marijuana which is a controlled substance. Thus, Maria's roommates are violating Kansas law. She too, however is violating the law. Her behavior is unlawful such that one is criminally responsible if one intentionally aids, abets, advises, hires, consels or procures the other to commit the crime. Kan. Stat. Ann. §21-3205 (1992 Supp.). Alternatively, Maria could be charged with conspiracy for agreeing with another to commit a crime or assist to commit a crime. Kan. Stat. Ann. §21-3302 (1988).

4. Have Adam and Alex broken any laws other than those against drinking and fighting?

Yes. Joe died as a result of his interaction with Adam and Alex. The twins will, thus, be held responsible for their behavior. There are several violations with which they could be charged. Agrevated battery is defined as the unlawful touching or application of force to the person of another with intent to injure that person or another and which inflicts great bodily harm Kan. Stat. Ann. §21-3414 (1988). Alternatively, they could be charged with involuntary manslaughter which is the unlawful killing of a human being without malice, which is done intentionally in the wanton commission of an unlawful act not amounting to a felony, or in the commission of a lawful act in an unlawful or wanton

manner. Kan. Stat. Ann. §21-3404 (1990).

5. **Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?**

Yes. Despite the fact Jose, the vehicle's driver, was not consuming alcohol he is in violation of Kansas law. Kan. Stat. Ann. §41-804 prohibits transporting liquor in open containers. Unless the liquor was in the original, unopened package, locked in the trunk or any outside compartment not accessible to the passengers, or in the exclusive possession of the passengers of a recreational vehicle or bus as defined in K.S.A. 75-1212, Kansas law was violated. Consequently, Jose's designated driver role was insufficient to keep him from breaking the law. He needed to prohibit consumption and the possession of alcoholic beverages from his vehicle. Since TJ and Carlos were the persons actually drinking in the car, they are arguably also transporting alcoholic beverages in the vehicle and are subject to punishment for the violation upon conviction.
TJ is also violating Kanas law. In Kansas no person under 21 is permitted to possess, consume, obtain, purchase or attempt to obtain or purchase alcoholic liquor or cereal malt. Kan. Stat. Ann. §41-727 (1991). Both TJ and Carlos are violating the prohibition against drinking or consuming alcoholic beverages on public streets, alleys, roads or highways or inside vehicles while on the public streets, alleys roads or highways. Kan. Stat. Ann. §41-719 (1991).

Carlos is in violation of Kan. Stat. Ann. §21-3610(2) (1991) which prohibits the furnishimg of alcoholic liquor to a minor direclty or indirectly. selling to, buying for, giving or furnishing any alcoholic liquor to any minor if he in any way assisted TJ acquire alcohol.

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Kansas requires practitioners dispense drugs to patients only when the drugs are fit, proper and necessary. Kan. Stat. Ann. § 65-1635 (1992). Dr. Melrose's dispensing without a valid

medical need is in violation of this section and Kan. Stat. Ann. §4127b (1991).

7. Is Danielle violating any law by taking only one or two pills from someone else's prescription?

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Danielle is violating Kansas law which prohibits the possession of controlled substances. Kan. Stat. Ann. §65-4127b (1991). Further, she is violating Kansas law which prohibits theft. It is unlawful to obtain and exert unauthorized control over property with the intent to permanently deprive the owner of possession, use or benefit of the property. Kan. Stat. Ann. §21-3701 (1991).

8. Is Renee breaking any law even though she is not selling drugs herself?

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. § 841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Kan. Stat. Ann. §65-4127b (1991) makes it unlawful to possess or have under one's control any controlled substance.

Further, it makes it unlawful for one to have controlled substances within 1000 feet of any school property. Id. Renee's behavior is clearly in violation of these laws.

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. § 841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. § 844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. Kansas has not yet dealt with this issue. Under the Model Penal Code, however, Jim's behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989).

10. Has the bartender or owner of Bulldog's Bar & Grill violated any law?

Yes. Kan. Stat. Ann. §41-715 prohibits any person from knowinlgy selling, giving away, disposing of, exchanging, delivering, or permitting the sale, gift or procuring of any alcoholic liquor to any person who is an incapacitated person, or any person who is physically or mentally incapacitated byy the consumption of liquor.

Additionally, the bartender and owner of Bulldog's will be civilly liable for serving Suif a reasonable person under the same or similar circumstances should have known that the person served was intoxicated at the time of she was served. Kan. Stat. Ann. § 413.241 (1990).

Lesson 2

CRIMINAL JUSTICE STATISTICS:
DRUG AND ALCOHOL RELATED OFFENSES
UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990
A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	• imprisonment for 5 years to life, and/or • fine not to exceed $300,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	• imprisonment for 15 years to life, and/or • fine not to exceed $300,000
First Offense: Codeine - Possession - 200 mg	• imprisonment not to exceed 1 year, and/or • fine not exceed $2500
Second Offense: Marijuana - Possession - 50 kg	• imprisonment for 5 years to life, and/or • fine not to exceed $300,000
Third Offense - Methamphetamine - Possession - 100 g	• imprisonment for 3 to 20 years, and/or • fine not to exceed $300,000

Cite: K.S.A. §65-4127(a)

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

Lesson 6 & 7

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Under §8-1567 it is illegal for any person to drive while under the influence of alcohol or with a blood alcohol concentration (BAC) of 0.10 or more.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

There is no distinction between the two offenses under Kansas law.

4. **What are the penalties for being convicted of DWI? DUI?**

Violation of §8-1567 is a misdemeanor. Penalties are as follow:

CONVICTION	PENALTY
first conviction	• 48 hours to 6 months in jail, OR • 100 hours of public service; and • fine of $200 to $500
second conviction	• 90 days to 1 year in jail, and • fine of $500 to $1000
third and subsequent convictions	• 90 days to 1 year in jail, and • fine of $1,000 to $2,500

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under §8-1001 any person who drives in the state of Kansas is deemed to have given consent to a breath test. Refusal of such test will result in the suspension of driving privileges for one year.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated?**

Under §8-1567 if a person's BAC is 0.10 or more s/he is legally intoxicated.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. Kansas law does not make a distinction between those over 21 and those under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

False. Under §41-804 it is illegal to transport in any vehicle on a highway or street any alcohol in an open container. Violation of this section is punishable by a fine up to $200 and/or jail for up to 6 months.

Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the **March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,**

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only
IL: minors <17 cannot drive between 11pm-6am Mon-Thur and

12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.